

FAQs: The Legal Basis for U.S. Use of Force Against Iraq

1. Why did the U.S. invade Iraq without the authorization of the U.N. Security Council?

The U.S. did act with Security Council authorization, as contained in Resolutions 678, 687, and 1044.¹

UNSCR 678, passed in November 1990 gave Iraq a final opportunity to comply with previous resolutions requiring its withdrawal from Kuwait, and authorized member states to use all necessary means to implement earlier resolutions "and to restore international peace and security in the area." This final clause expanded the authorization from simply expelling Iraqi military forces from Kuwait to a broader authority.²

UNSCR 687, passed in March 1991 approved the cease-fire terms established in Resolution 686, including the following provision:

Iraq shall unconditionally accept the destruction, removal, or rendering harmless, under international supervision, of:

(a) All chemical and biological weapons and all stocks of agents and all related subsystems and components and all research, development, support and manufacturing facilities;

(b) All ballistic missiles with a range greater than 150 kilometers and related major parts, and repair and production facilities.

This Resolution also required Iraq to turn over all of its weapons of mass destruction to a U.N. "Special Commission", which would also oversee the destruction of prohibited ballistic missiles in Iraq.

Over the next 11 years, the Security Council repeatedly condemned Iraq for violating the terms of Resolution 687. As early as August 1991 (in Resolution 707), the Security Council found that Iraq was in "material breach" of the cease-fire resolution which "provided the conditions essential to the restoration of peace and security in the region". It specifically cited Iraq's failure to comply with the provisions of the cease-fire agreement relating to weapons of mass destruction. Similar resolutions were passed in subsequent years.³

In 1998, the Security Council again noted continued Iraqi violation of the WMD provisions, and threatened that "any further violations" would be followed by the "severest consequences for Iraq". When Iraq then announced expulsion of U.N. weapons inspectors, the "severest consequences" the Security Council could agree upon was another resolution "condemning" Iraq.

UNSCR 1441, passed in November 2002, once again found Iraq to be "in material breach" of the cease-fire resolution. The Security Council decided "to afford Iraq, by this resolution, a final opportunity to comply with its disarmament obligations under relevant resolutions of the Council".

In January, 2003, chief U.N. Special Commission inspector Hans Blix told the Security Council that "Iraq appears not to have come to a genuine acceptance, not even today, of the disarmament which was demanded of it..." When the U.S. and U.K. then sought a Security Council resolution authorizing the use of force against Iraq, France and Russia promised to veto any such resolution.

On March 20, 2003, the U.S. and U.K. reported that they were using force against Iraq. The U.S. stated that repeated Iraqi violations of the terms of the ceasefire terminated the cease-fire, and that the U.S. was authorized by UNSCR 678 to use force "to restore international peace and security in the area".

2. How can the U.S. rely upon resolutions that are over 10 years old?

Neither the U.N. Charter nor resolutions 678 and 687 contain any provision which would suggest that resolutions terminate automatically after a set period of time, nor has such an interpretation been previously made by the Security Council in other contexts.

3. Since no WMD have been found, how can the U.S. say Iraq violated the cease-fire resolution?

The resolution required Iraq to permit the UN Special Commission to oversee its destruction of WMD capability, something Iraq has never done. Secondly, the search for Iraqi WMD capability is still in its early stages (as of October 2003 U.S. teams had searched only 10 of the 120 known ammunition storage points in Iraq). It is therefore too early to conclude that Iraq did not possess WMD. Thirdly, evidence has been found of a clandestine network of laboratories and facilities as well as trained personnel capable of researching and developing biological weapons. Evidence was also found of ballistic missile development starting in 2000.⁴

¹ Department of State, "Powell: War on Iraq 'Is Being Conducted With International Authority'", <http://usinfo.state.gov/topical/rights/law/03032636.htm>, accessed on July 11, 2003.

² The analysis which follows is drawn from a chapter entitled "Was Operation Iraqi Freedom Legal" written by Robert F. Turner in the book *Bush vs. the Beltway*, 2003, 171-177.

³ See for example UNSCR 778 (1991), UNSCR 949 (1994), UNSCR 1060 (1996).

⁴ Beeston, Richard, "The Kay Report: What the Iraq Survey Group Has Found", London Times, October 3, 2003.